



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Matthew J. Curtis,
Office of the State Comptroller

Administrative Appeal

CSC Docket No. 2019-1147

ISSUED: JUNE 13, 2019

(ABR)

Matthew J. Curtis, a former unclassified Administrative Analyst 4 with the Office of the State Comptroller (OSC), appeals the determination of the Department of the Treasury (Treasury), which found that he was ineligible for differential back pay for the period between July 1, 2015 and April 4, 2018.

By way of background, from December 13, 2014 to February 24, 2017 the appellant served as an unclassified Administrative Analyst 4 with the OSC. Thereafter, in February 2017, the appellant was hired in his current position as an Information Technology Manager with the New Jersey Educational Facilities Authority (NJEFA). It is noted that, pursuant to *N.J.S.A. 18A:72A-4(e)*, the NJEFA is not a Civil Service jurisdiction.

Incumbents in the title of Administrative Analyst 4 are represented by the Communications Workers of America, AFL-CIO (CWA). Between July 1, 2011 and June 30, 2015, employees in the Administrative/Clerical, Professional, Primary Level Supervisor and Higher Level Supervisors Units were covered under a collective bargaining negotiations agreement (2011 Agreement) which stated, in relevant part, that employees eligible for normal increments under the State Compensation Plan would receive them during the term of the contract. The State and the CWA were unable to reach a new agreement prior to the 2011 Agreement's June 30, 2015 expiration date. After June 30, 2015, the State ceased providing annual incremental pay increases to employees in covered titles, including the title of Administrative Analyst 4. The State and the CWA were unable to reach a new agreement until April 30, 2018. On that date, the parties executed a Memorandum

of Agreement (MOA) covering employees in the Administrative/Clerical, Professional, Primary Level Supervisor and Higher Level Supervisors Units for the period between July 1, 2015 and June 30, 2019. The parties agreed to an April 4, 2018 effective date for the MOA. Section (B)(2)(b) of the April 4, 2018 MOA provided that “[a]ll employees on payroll as of the effective date of [the] MOA, who were eligible to receive increments between July 1, 2015 and the effective date of the [MOA]” would receive the increments they would have received if increments had been paid on their anniversary dates. After ratification of the MOA, multiple issues arose which led the CWA to file a series of grievances challenging its implementation. Subsequently, on February 27, 2019, the parties entered into a Settlement Agreement and Release (2019 Settlement) in order to resolve those grievances. The 2019 Settlement provided, in relevant part, that retroactive payments would be made to employees who separated from State service between the MOA’s April 4, 2018 effective date and the October 26, 2018 date of the retroactive payments made thereunder, due to a resignation unrelated to discipline, a layoff, or the discontinuation or abolition of programs or offices, who would have otherwise been eligible for retroactive relief under the MOA. Thereafter, in a May 9, 2019 decision, the Civil Service Commission (Commission) relaxed *N.J.A.C. 4A:3-4.20* in order to allow the State and the CWA to implement this portion of the 2019 Settlement. See *In the Matter of Communications Workers of America, AFL-CIO* (CSC, decided May 9, 2019).

On appeal, the appellant states that the Department of the Treasury (Treasury) advised him in October 2018 that he was not entitled to retroactive increments under the Agreement because he was no longer paid from Centralized Payroll. He acknowledges that as an employee of the NJEFA, his salary is not paid through the Centralized Payroll that is managed by the Treasury, Office of Management and Budget. However, he maintains that he remains on a State payroll and that he is considered an active employee for State pension purposes. He argues that a fairer way to determine active State employees for purposes of the MOA would be to use the State Pension System’s active members. Furthermore, he claims that other individuals, including those employed by State universities, are receiving differential back pay in accordance with the MOA even though they are not paid through Centralized Payroll.

CONCLUSION

In State service, the Commission is empowered to establish, maintain, and approve changes in a compensation plan for all employees in the career and unclassified services. *N.J.A.C. 4A:3-4.1(d)*. Each employee in the career and unclassified services shall be paid within the salary range or at the pay rate assigned to the employee's job title and pay shall be adjusted in accordance with *N.J.A.C. 4A:3-4.1, et seq.*, except as otherwise provided by law, rule, or action of the Commission. *N.J.A.C. 4A:3-4.1(d)2*.

In the instant matter, the Commission does not have jurisdiction to review the appellant's compensation as a NJEFA employee. The New Jersey Educational Facilities Authority Law (NJEFA Law), *N.J.S.A.* 18A:72A-1, *et seq.*, empowers the NJEFA to employ personnel without regard to the Civil Service Act and to determine the compensation of its employees. *See N.J.S.A.* 18A:72A-4(e). As such, because the appellant is not presently a Civil Service employee, the Commission does not have jurisdiction to review the appellant's entitlement to retroactive payments under the MOA.

Additionally, even though the appellant's request covers a portion of the time where he was employed by the OSC, this fact does not provide a basis for the Commission to find that it has jurisdiction in this matter, as he was not a Civil Service employee as of the effective date of the MOA. In this regard, the MOA provides that it only applies to employees who were on the State payroll as of the April 4, 2018 effective date and under Civil Service rules, personnel actions having retroactive effective dates apply **only** to covered employees in Civil Service jurisdictions who remain on a State payroll on the date of the retroactive payment and covered employees who retire or die during the period of retroactive application. *See N.J.A.C.* 4A:3-4.20. Further, while the Commission, in a May 9, 2019 decision, relaxed *N.J.A.C.* 4A:3-4.20 to allow the State and the CWA to implement the 2019 Settlement, the relief provided therein only extends to employees who *separated from State service between the MOA's April 4, 2018 effective date and October 26, 2018 due to a resignation unrelated to discipline, a layoff, or the discontinuation or abolition of programs or offices, who would have otherwise been eligible for retroactive relief under the MOA.* *See In the Matter of Communications Workers of America, AFL-CIO, supra.* Since the appellant was not paid through the payroll of a State agency covered by the Civil Service law and rules at any point between April 4, 2018 and October 26, 2018, neither the MOA or the 2019 Settlement can be said to entitle him to a retroactive payment.

Furthermore, the appellant's claim that other State employees not paid through Centralized Payroll, including State university employees, are receiving differential back pay does not demonstrate that he is entitled to such a payment under the MOA. As noted above, pursuant to *N.J.S.A.* 18A:72A-4(e), NJEFA employees are exempt from the Civil Service law and rules. Conversely, some State College employees serve in titles which are covered by the Civil Service law and rules and are assigned to bargaining units represented by the CWA. In this regard, it is noted that P.L. 1986, c. 42 removed professional members of the academic, administrative and teaching staffs in State Colleges from the provisions of Title 11¹ while keeping other professional positions listed as classified positions as of July 9, 1986 subject to the Civil Service law and rules. *See N.J.S.A.* 18A:64-21.2; *See also In the Matter of Jillian Itri* (CSC, decided June 20, 2018). Further, in 1993, the

¹ Now Title 11A.

Merit System Board² created many generic non-competitive titles for use by the Department of Higher Education in connection with a settlement agreement pertaining to the classification of positions at State universities after the enactment of P.L. 1986, c. 42. When these generic, non-competitive titles were created, they were assigned to an employee relations group, including the CWA. As such, it is possible that some State university employees are individuals who are entitled to a retroactive payment under the MOA because they are covered under Title 11A and serving in titles assigned to a CWA-represented bargaining unit.

Finally, assuming *arguendo* that other non-Civil Service employees received a retroactive payment in error, it would not entitle the appellant to such a payment, as administrative errors do not accord vested or other rights. See *Cipriano v. Department of Civil Service*, 151 N.J. Super. 86 (App. Div. 1977); *O'Malley v. Department of Energy*, 109 N.J. 309 (1987); *HIP of New Jersey v. New Jersey Department of Banking and Insurance*, 309 N.J. Super. 538 (App. Div. 1998). Accordingly, the foregoing does not provide the Commission with a basis to find that the appellant is entitled to differential back pay under the MOA.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 12TH DAY OF JUNE, 2019



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

² On June 30, 2008, Public Law 2008, Chapter 29 was signed into law and took effect, changing the Merit System Board to the Civil Service Commission, abolishing the Department of Personnel and transferring its functions, powers and duties primarily to the Civil Service Commission.

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Matthew J. Curtis
Douglas J. Ianni
Kelly Glenn
Records Center